

REMARKS

By the present amendment, independent claims 1 and 2 have been amended to obviate the examiner's objections thereto and/or to further clarify the concepts of the present invention. More particularly, these claims have been amended to incorporate subject matter from dependent claim 4, and claim 4 has been canceled. In addition, claims 6 and 7 have been amended to correct apparent grammatical errors. The applicants respectfully submit that no new matter has been added. It is believed that this Amendment is fully responsive to the Office Action dated April 6, 2009.

It is submitted that these amendments to claims 1 and 2 are helpful in distinguishing the subject claims over the cited prior art and do not raise new issues which would require further consideration and/or search. In addition, it is submitted that such amendments place the application in better form for appeal by materially reducing or simplifying the issues for appeal. Furthermore, no additional claims are presented without cancelling a corresponding number of finally rejected claims. In view of the above, it is submitted that entry of the above amendments is in order and such is respectfully requested.

In the Office Action, claims 2-12 were rejected under the second paragraph of 35 USC § 112 as being indefinite. In particular, it was alleged that claim 2 was indefinite regarding the noted phrase "wherein the content of said component (B) is not less than 20% by weight of the total amount of the components (B) and (D)." Reconsideration of this rejection in view of the above

claim amendments and the following comments is respectfully requested.

In response, claim 2 has been amended to recite "...a total content of said component (B) is not less than 20 % by weight of the total amount of the components (B) and (D) combined." It is therefore submitted that the claim is in full conformity with the provisions of the cited statute. Therefore, withdrawal of the rejection of claims 2-12 under second paragraph of 35 U.S.C. § 112 is respectfully requested.

Claims 1-12 again were rejected under 35 USC § 103(a) as being unpatentable over the patent to Hojo et al further in view of the publications to Grossman and Klahorst. In making this rejection, the same reasons as set forth in the prior Action were relied upon. Briefly, it was acknowledged that the Hojo et al patent does not teach an additive composition as recited in claims 1 and 2 which includes a chelating agent. However, it was asserted that the inclusion in a food additive of ferrous gluconate, a suitable chelating agent as disclosed on page 11 of the subject specification, is taught by the first cited Grossman publication. The second publication to Klahorst was cited for teaching a suitable amount of calcium to be included in a food additive. Reconsideration of this rejection in view of the above claim amendments and the following comments is respectfully requested.

As noted previously, independent claims 1 and 2 have been amended to further distinguish over the cited publications. In particular, these claims have been amended to more specifically define the chelating agent as being selected from the group consisting of condensed phosphates, malates, succinates, tartarates, glutamates, EDTA salts, and citrates. As can be appreciated, the claims do not include, among other things, ferrous gluconate as a chelating agent.

Before discussing the rejection in detail, a brief review of the presently claimed invention may be quite instructive. The subject invention generally is directed to a food additive composition which contains 100 parts by weight of at least one inorganic compound (A) selected from the group consisting of calcium compounds and magnesium compounds having a solubility in water at 20°C of not more than 0.1 g/100 g of water, 1 to 90 parts by weight of gum arabic (B) and 0.01 to 5 parts by weight of a chelating agent (C).

More particularly, the presently claimed invention provides a food additive composition comprising (A) water hardly soluble inorganic compound selected from calcium compounds and magnesium compounds, (B) gum arabic and (C) a chelating agent (claim 1), and the above (A), (B), (C), and further (D) an additive selected from emulsifiers, thickening stabilizers, modified starches, soybean polysaccharides and oligosaccharides (claim 2), which are excellent in dispersibility in liquid and flavor, and when added to foods, a food composition excellent in storage stability and flavor.

Specifically, the presently claimed invention includes the feature of the inclusion of a chelating agent to prevent thickening and gellation caused by reaction of calcium ions with protein contained in foods such as a food additive. This chelating agent (C) is selected from the group consisting of condensed phosphates, malates, succinates, tartarates, glutamates, EDTA salts, and citrates. It is submitted that such a food additive composition is not taught or suggested by the patent to Hojo et al or the publications to Grossman and Klahorst, whether taken singly or in combination.

In particular, the Hojo et al patent is directed to a food additive slurry or powder composition comprising (A) at least one agent selected from calcium carbonate, calcium phosphate and ferric pyrophosphate, and (B) gum arabic. However, the Hojo et al patent essentially differs from the presently claimed invention in that the patent does not require, among other things, a chelating agent as is presently claimed. In the amendments to claims 1 and 2 "a chelating agent" is now defined as those previously recited in claim 4 in which "gluconates" are not included to more clearly distinguish from Hojo et al patent disclosing ferrous gluconate as one of nutritional sources of iron. As set forth previously, the presently claimed invention and the Hojo et al patent are essentially different and the patent is only a prior art disclosure having drawbacks which are solved by the presently claimed invention.

As a consequence, one of ordinary skill in the art would not be led to combine the teachings of the three publications in the manner in which were done in the rejection. Specifically, one of

ordinary skill would not be motivated to use the iron supplement as taught by the Grossman publication in a food additive such as disclosed in the Hojo et al patent. It is well established principle of U.S. patent practice that the prior art must contain some suggestion for combination since, without such, any combination is pure speculation on the part of the examiner and is based on a prohibited hindsight reconstruction from applicants' own disclosure. Therefore, it is submitted that the subject claims are not obvious over the Hojo et al patent alone or in combination with the Grossman and Klahorst publications.

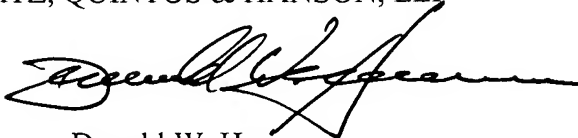
For the reasons stated above, withdrawal of the rejection under 35 U.S.C. § 103 and allowance of claims 1-3 and 5-12 as amended over the cited patent publications are respectfully requested.

In view of the foregoing, it is submitted that the subject application is now in condition for allowance and early notice to that effect is earnestly solicited.

In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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